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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,868	12/15/2000	Jeffrey E. Stahmann	279.327US1	9777

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EXAMINER

DROESCH, KRISTEN L

ART UNIT PAPER NUMBER

3762

DATE MAILED: 11/26/2003

121

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,868

Applicant(s)

STAHMANN ET AL.

Examiner

Kristen L Droesch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/15/03(response).
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-40 is/are allowed.
- 6) ☒ Claim(s) 1-25 and 41 is/are rejected.
- 7) ☒ Claim(s) 42-44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Valikai et al. (5,948,005).

Regarding claims 1, 19, 21, and 25, Valikai et al. shows a device (20) comprising circuitry (74, 76) for communicating with a medical device and a display for providing a histogram of data (Figs. 6-8; Col. 3, lines 35-45).

With respect to claims 17-18, Valikai et al. shows the device displays data using a monitor or printer (Fig. 4; Col. 3, lines 35-45).

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical device has not been positively recited as an element of the claims. The Valikai et al. device would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

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3. Claims 1-25 and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Conley et al. (6,415,175).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 19, 21, and 25, Conley et al. shows a device (60) comprising circuitry (106) for communicating with a medical device and a display for providing a histogram of data (Figs. 3, 6A-6B).

With respect to claims 17-18, Conley et al. shows the device displays data using a monitor (102) or a printer (Figs. 3, 6A-6B; Col. 8, lines 27-41).

Regarding claim 41, Conley et al. shows a device (60) with a processor (76), communication circuitry (62, 106) a display (102), and a memory (56) encoded with software executable by the processor to retrieve data from the communication circuitry regarding the cardiac events occurring at the two or more sites; form a statistical distribution for each of the two or more sites; and display the statistical distribution for each of the two or more sites in a histogram; the histogram including a plurality of histogram bins including a representation for at least a portion of the statistical distribution for each of the two or more sites (Figs. 6A-6B; Col. 9, lines 13-58)

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The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical device has not been positively recited as an element of the claims. The Conley et al. device would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

***Allowable Subject Matter***

4. Claims 26-40 are allowed.
5. Claims 42-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record fails to teach or suggest a device that has a *memory encoded with a software program* to form a statistical distribution for two or more sites, display a statistical distribution for each of the two or more sites in a histogram including a plurality of histogram bins wherein each histogram bin includes a representation for at least a portion of a left ventricular cardiac event distribution and a representation for at least a portion of a right ventricular cardiac event distribution.

***Response to Arguments***

6. Applicant's arguments filed 10/15/03 have been fully considered but they are not persuasive.

With respect to applicant's arguments for claims 1-25, the examiner has not considered the statements of intended use. The language "circuitry for", and "display for" merely recites intended use of the circuitry and display. As explained before, Valikai et al. and Conley et al. each show programming devices that display histograms. Conley et al. further shows histograms of statistical event distributions for two sites (atrium and ventricle). These devices could be *used for* displaying left and right ventricular cardiac histograms if these programming devices received this specific data. It is suggested that applicant recite "a processor adapted to display histograms of right ventricular cardiac event distributions and left ventricular cardiac event distributions" or "a computer readable medium encoded with a program to display histograms of right ventricular cardiac event distributions and left ventricular cardiac event distributions" in order to avoid language of intended use. It is imperative that the function and structure of the programming device be set forth in the claims instead of claiming data that is displayed as a result of the specific data received from the medical device. The specific data received from the medical device will ultimately depend on the function and structure of such medical device.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

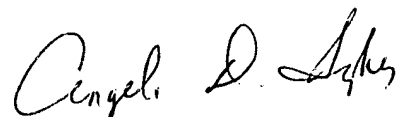
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Droesch whose telephone number is 703-605-1185. The examiner can normally be reached on M-F, 10:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



kld



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